Decision for dispute CAC-UDRP-103719

Case number	CAC-UDRP-103719
Time of filing	2021-04-08 11:04:12
Domain names	wwwavast.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Avast Software s.r.o.

Complainant representative

Name	Rudolf Leška

Respondent

Organization	Fundacion Privacy Services Ltd

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of several trademarks for the name AVAST, among which the following:

- AVAST!, international registration No. 1011270 of 15 April 2009, for goods in class 9, designating Australia, Denmark, Estonia, Finland, UK, Greece, Ireland, Japan, Lithuania, Sweden, Turkey, Austria, Belgium, Benelux, China, Cyprus, Germany, France, Hungary, Italy, Latvia, Poland, Portugal, Romania, Slovenia, Slovakia and Vietnam;
- AVAST international registration No. 839439 of June 22, 2004, for goods and services in the classes 9 and 42, including software, designating Australia, Denmark, Estonia, Finland, UK, Greece, Ireland, Japan, Lithuania, Sweden, Turkey, United States, Austria, Belgium, Benelux, China, Cyprus, France, Hungary, Italy, Latvia, Poland, Portugal, Romania, Slovenia and Slovakia;
- AVAST, EUTM registration No. 010253672, claiming a priority date of 25 August 2011, covering goods in classes 9, 16 and 42;
- AVAST, UK registration No. UK00910253672, claiming a priority date of August 25, 2011, covering goods in classes 9, 16 and 42;
- AVAST, US registration No. 85378515, claiming a priority date of July 17, 2012, covering goods in class 9; and

AVAST, US (figurative), registration No. 87236956, claiming a priority date of November 15, 2016 and with registration date September 5, 2017, covering goods in classes 9 and 42.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a security software company operating on the market since 1988. Its well-known core product AVAST antivirus software has more than 400 million users. The Complainant distributes its products via its website www.avast.com where a customer can find product information and can directly download AVAST software.

No information is known about the Respondent who acquired the disputed domain name <wwwAvast.com> in 2017, though the disputed domain name was initially registered before that date, in 28 December 2003.

The disputed domain name is not currently used in connection with any goods or services and automatically redirects Internet users to number of ever changing third-party websites.

PARTIES CONTENTIONS

COMPLAINANT' CONTENTIONS:

Identical or confusingly similar

The Complainant argues that the disputed domain name <wwwAvast.com> and the Complainant's registered trademarks AVAST are confusingly similar.

Particularly, the Complainant contends that the disputed domain name <wwwAvast.com> is identical to the Complainant's core element of the family of AVAST trademarks and points out that the word "AVAST" as such has no specific meaning in English.

Moreover, according to the Complainant, the omission of a dot "." between the prefix "www" and its name and trademark "AVAST" is indicative of the Respondent's intention of "typosquatting" as long as usual for Internet users to omit a dot when typing the whole domain name.

The Complainant also points out that the applicable Top-Level suffix "-com" does not per se prevent the likelihood of confusion.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the disputed domain name or a name corresponding to the disputed domain name, nor that the Respondent has ever offered any goods or services under the disputed domain name, nor has making any businesses with the Complainant. Moreover, the Complainant states that the Respondent has not been licensed or authorized in other way to use the Complainant's trademarks nor to apply for or use any domain name incorporating such trademarks.

Registered and used in bad faith

As far as bad faith registration is concerned, the Complainant states that due to the worldwide usage of its software product and considering that the Complainant's business name and trademarks AVAST are well-known mark, the Respondents has always been aware of the Complainant rights over the name AVAST.

The Complainant considers therefore that the Respondent choose to acquire and use the disputed domain name to create

intentionally a confusion with the Complainant and its software product to monetize on the redirection of internet traffic to third party websites, which is a prima facie case of non-legitimate use.

RESPONDENT'S CONTENTIONS:

The Respondent did not respond to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules states that the Panel decides a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel draws such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant’s factual statements and the documentary evidences provided in support of them.

1.
The Panel finds that the disputed domain name <wwwAvast.com> and the Complainant’s registered trademarks “AVAST”, declared to be well-known mark with high degree of reputation (as stated in CAC case no. 101909, CAC case no 101917), are identical.

The variation in omitting the dot between the prefix “www” and the Complainant’s name and trademark “AVAST”, as well as the gTLD “.com”, would usually be disregarded by the Internet users and therefore do not later the same impression the disputed domain name and the registered trademarks produce.

Accordingly, the Panel considers that the disputed domain name and the Complainant’s previously registered trademarks are confusingly similar and infers that paragraph 4(a)(i) of the Policy is satisfied.

2. According to the Complainant’s contentions and evidences submitted within this proceeding, which were not disputed, the

Respondent does not appear to be in any way related to the Complainant's business, does not act as the agent of the Complainant nor currently known and has never been known as “AVAST”, or any combination of this trademark.

Furthermore, the disputed domain name <wwwAvast.com> is not associated with any business activity and instead has been used with the purpose of attracting Internet users and redirecting them to other webpages. Therefore, the Respondent does not appear to have a legitimate interest in the disputed domain name but rather appears to use it for his own commercial gain by creating a likelihood of confusion with the Complainant's well-known trademarks.

Consequently, and in the absence of a Response, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

3. Although the disputed domain name was initially registered before the Complainant's trademarks were registered, according to the Panel, the Respondent’s acquisition and usage of the disputed domain name was performed in bad faith for the following reasons:

The Policy and the Rules do not require that Complainant's trademark be registered before the disputed domain name in order to demonstrate that it was registered and is being used in bad faith. In any event, the Respondent did not acquire the disputed domain name until 2017, which is more than ten years after Complainant's first international registration of the trademarks were undertaken.

Given the widespread presence of the Complainant’s trademarks and the way how the Respondent is using the disputed domain name which reproduces completely the Complainant’s trademarks, the Panel finds that the Complainant intended to free ride on the reputation of Complainant’s trademarks in an attempt to exploit, for its commercial gain, Internet users destined for Complainant.

In other words, in the absence of sufficient evidence to the contrary and rebuttal from the Respondent, the Panel infers that by choosing to make use of the domain name which is identical to Complainant’s trademarks and by intending to exploit, for commercial gain, Internet users destined for Complainant, the Respondent’s activity is indicative of registration and use of the disputed domain name in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **WWWAVAST.COM**: Transferred

PANELLISTS

Name	**JUDr. Hana Císlerová, LL.M.**

DATE OF PANEL DECISION 2021-05-13

Publish the Decision